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Filing date: **09/22/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91187847
Party	Plaintiff The Susan G. Komen Breast Cancer Foundation, Inc.
Correspondence Address	Molly Buck Richard Richard Law Group 8411 Preston Road Suite 890 Dallas, TX 75225 UNITED STATES molly@richardlawgroup.com
Submission	Motion to Compel Discovery
Filer's Name	Molly Buck Richard
Filer's e-mail	molly@richardlawgroup.com
Signature	/Molly Buck Richard/
Date	09/22/2009
Attachments	Motion to Compel.pdf (25 pages)(3312825 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC.

Opposer,

v.

Opposition No. 91187847

CHRISTINA MACHLEIT and
MATILDA BEELER

Applicant.

**MOTION TO COMPEL DISCOVERY RESPONSES AND
INITIAL DISCLOSURES**

The Susan G. Komen Breast Cancer Foundation, Inc., d/b/a Susan G. Komen for the Cure, Opposer in the above-referenced opposition proceeding, files this Motion to Compel Initial Disclosures and Discovery Responses from the Applicants, Christine Machleit and Matilda Beeler.

Initial disclosures were due from the Applicants on March 13, 2009 and have not been received.

On August 10, 2009, Opposer served on Applicants its First Requests for Admission,¹ First Set of Interrogatories to Applicants, and First Requests for Production to Applicant. Responses were due on September 14, 2009 and have not been received. See Exhibit A (copies of requests).

¹ The admission requests are deemed admitted under Fed. R. Civ. P. 36(a) and are not the subject of this Motion.

On September 15, 2009, the package of discovery was returned to Opposer's counsel by the U.S. Postal Service as "Attempted, Not Known". A copy of the return envelope is attached as Exhibit B. The address used for the requests is the address that is on file with the PTO and Applicants have not changed their address with the PTO or notified Opposer of any address change. On September 15, 2009, Opposer's counsel sent another letter to Applicants at their last known address, a copy of which is attached as Exhibit C.

Applicants' decision to represent themselves *pro se* is not an excuse for failing to comply with the Rules. Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 U.S.P.Q.2d 1212, 1212 n.2, (TTAB 2006). Applicants have not provided Initial Disclosures, nor have they responded to Opposer's discovery requests. If Applicants have had an address change, it is their obligation to advise the Board of that change and Opposer's only obligation is to send pleadings to Applicants last known address. See Section 117.07 of the TBMP.

Therefore, an Order from the Board is requested compelling Applicant to make Initial Disclosures, to respond to the First Set of Interrogatories to Applicant and First Requests for Production to

Applicant, and to provide the documents requested, all the foregoing by a date certain and without objection.

The undersigned certifies that they have attempted to resolve the issues in this motion in good faith by attempts to contact the Applicants and resolution has not occurred.

Respectfully submitted,

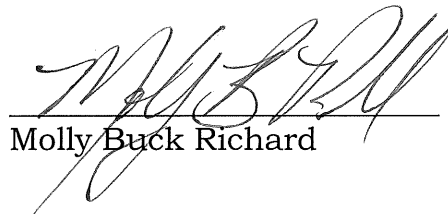
RICHARD LAW GROUP
ATTORNEYS FOR OPPOSER



Molly Buck Richard
James F. Struthers
Richard Law Group
8411 Preston Road, Suite 890
Dallas, Texas 75225
(214) 206-4300
(214) 206-4330 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2009, the foregoing document was served upon Applicants at their address at 14738 Pacific Ave., Baldwin Park, CA 91706.



Molly Buck Richard

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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THE SUSAN G. KOMEN BREAST
CANCER FOUNDATION, INC.

Opposer,

v.

Opposition No. 91187847

CHRISTINE MACHLEIT and
MATILDA BEELER

Applicants.

OPPOSER'S FIRST REQUESTS FOR PRODUCTION TO APPLICANTS

The Susan G. Komen Breast Cancer Foundation, Inc., Opposer in the above referenced matter serves these Requests for Production on Applicants, Christine Machleit and Matilda Beeler pursuant to Rule 2.120(d) of the Trademark Rules of Practice and pursuant to Rule 34 of the Federal Rules of Civil Procedure. Applicants shall serve their responses and produce the requested documents to the offices of Opposer's counsel, Richard Law Group, at 8411 Preston Road, Suite 890, Dallas, TX 75225 within thirty (30) days of service of these Requests.

Definitions

A. "Komen" or "Opposer" means the named Opposer, its predecessors in interest or title, parent and subsidiary entities, and any and all related companies (as defined by 15 USC § 1127) together with the directors, officers, employees, attorneys, agents and representatives and other personnel thereof.

B. "Applicants" means the named Applicants, their predecessors in interest or title, parent and subsidiary entities, and any and all related companies (as defined by 15

USC § 1127) together with the directors, officers, employees, attorneys, agents and representatives and other personnel thereof.

C. "Person" or "Persons" means any individual, association, partnership, corporation, firm, organization or entity.

D. The word "or" means "and/or" and the word "and" means "and/or."

E. "Document" or "Documents" means the original and all identical copies of written, printed, typed and visually or orally reproduced material of any kind, whether or not privileged, which are in the possession, custody or control of Applicants, including, but not limited to, contracts, agreements, memoranda, assignments, licenses, minutes of meetings, minute books, books of account, orders, invoices, receipts, statements, computation sheets, notebooks, diaries, reports, photographs, drawings of any kind, tracings, blueprints, microfilm, photostats, sketches, charts, catalogues, brochures, advertising and promotional literature, bulletins, cables, telegrams, letters, notes, instructions, reports, test data, and any other similar materials.

F. The term "things" as used herein shall refer to any tangible object, including audio recordings, video recordings and the like, which may for some reason be construed as something other than a document.

G. "Identify" or "identification" with respect to a person or persons means to state:

- 1) the full name;
- 2) the title;
- 3) the present address, if known, or if not, the last known address;
- 4) the employer or business affiliation of such person(s); and

- 5) the employment duties, functions and responsibilities of such person or persons.

H. “Identify” or “identification” with respect to a company means to state:

- 1) the name;
- 2) the place of incorporation, if incorporated;
- 3) the principal place of business; and
- 4) the identity of the person or persons having knowledge of the matter with respect to which the company is named.

I. “Identify” or “identification” with respect to a government agency,

organization or other government entity means to state:

- 1) the name;
- 2) the municipality, city, county, state or other entity by and/or for which the organization serves;
- 3) the principal place of business;
- 4) the purpose of the organization; and
- 5) the identity of the person or persons having knowledge of the matter with respect to which the organization is named.

J. “Identify” or “identification” with respect to a document means to state:

- 1) the title of the document;
- 2) the date of the document;
- 3) the name of the person or persons who signed, prepared, or participated in the preparation of such document;
- 4) the name of the person to whom the document was addressed;

- 5) the name of each person to whom the document was given or sent, or who received such document or a copy thereof;
- 6) the identity of each person having possession, custody, control or effective control of the document or thing; and
- 7) the nature and subject matter of the document or thing.

In lieu of such identification, Applicants may simply provide a copy of the document with their answers to these interrogatories and indicate on the document copy which interrogatory or sub-interrogatory the document is being produced in response to.

K. "Identify" or "identification" with respect to a thing means to state:

- 1) a description of the thing;
- 2) where the thing is located; and
- 3) the identity of the person or persons who have possession or control of the thing.

In lieu of such identification, Applicants may simply provide photographs or other illustrative replicas of the thing with their answers to these interrogatories and indicate on the photograph or replica which interrogatory or sub-interrogatory the same is being produced in response to.

L. "Identify" or "identification" with respect to an event means to state:

- 1) the date of such event;
- 2) the location of such event; and
- 3) the identity of each person present at the event.

M. "Including" means "including but not limited to."

N. "Date of first use" refers to the date of first use in the United States unless otherwise stated.

O. "Commerce" refers to interstate or foreign commerce.

P. "Services" means "products, goods or services."

Q. "On" and "in connection with" mean "on or in connection with."

R. "Relating to" means "relating to, reflecting, supporting, evidencing, discussing, showing, summarizing, analyzing, containing, pertaining to, or concerning in any way, directly or indirectly."

S. "Communication" or "communications" means any contact or act, the purpose or effect of which is to convey information or knowledge, including, but not limited to, written contact by letters, memoranda, financial reports, telecopies, telegrams, telexes, or by any documents, and oral contact by such means as face-to-face meetings, telephone conversations, or recorded telephone messages.

T. The singular includes the plural and the plural includes the singular.

U. "Advertising materials" means any and all advertising or promotional materials, including, but not limited to, brochures, catalogs, inserts, phone directories, Yellow Pages advertisements or listings, radio and television commercials, signage and packaging materials, labels, hang tags, decals or other indicia.

Requests for Production

REQUEST FOR PRODUCTION NO. 1:

All documents and things relating to Applicants' selection of the mark TIME FOR A CURE and the decision to file an application for registration of that mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

Representative documents relating to the channels of trade through which Applicants' services are sold, advertised and marketed under the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

Samples or photographs of any and all advertisements or other information bearing Applicants' mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

Any and all documents relating to Applicants' first use of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

Any and all documents evidencing any revenues received by Applicants under the mark TIME FOR A CURE, including but not limited to proof of donations, purchase orders, invoices, sales receipts and credit card receipts.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

Samples of advertising materials that Applicants have used or intend to use in connection with advertising or rendering services under the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

Samples of tags, labels, product packaging, advertising and other materials that Applicants use or intend to use, on products or services under the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

All documents that refer to or evidence Applicants' first knowledge of the Opposer's use of any "For a Cure" or "For the Cure" marks for any goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

All documents and things relating to Applicants' business plans for use of the mark TIME FOR A CURE.

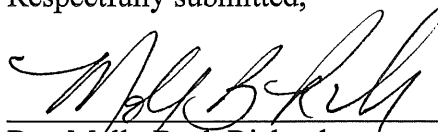
RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to identify the dates of first use or time periods during which Applicants have offered or sold goods or rendered any services under or in connection with the mark TIME FOR A CURE and the total revenues generated from the sales of such goods or services.

RESPONSE:

Respectfully submitted,

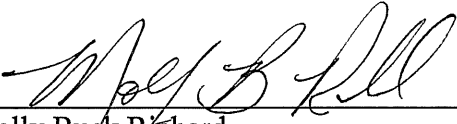


By: Molly Buck Richard
RICHARD LAW GROUP
8411 Preston Road, Suite 890
Dallas, Texas 75225
Tel: 214 206 4301
Fax: 214 206 4330

ATTORNEYS FOR THE SUSAN G. KOMEN
BREAST CANCER FOUNDATION, INC.

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Opposer's First Requests for Production of Documents to Applicants, Christine Macheit and Matilda Beeler, 14738 Pacific Avenue, Baldwin Park, CA 91706 on the 10th day of August, 2009, by U.S. Mail, Postage Prepaid, Certified, Return Receipt Requested.



Molly Buck Richard

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CHRISTINE MACHLEIT and
MATILDA BEELER

Applicants.

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANTS

Opposer, The Susan G. Komen Breast Cancer Foundation, Inc. hereby serves its First Set of Interrogatories to Applicants and pursuant to the Rules, requests that Applicants' responses be served upon the undersigned within thirty (30) days of service of these Interrogatories.

DEFINITIONS

The definitions set forth in Opposer's First Requests for Production of Documents are incorporated herein in their entirety and shall be used by Applicants in responding to these Interrogatories

INTERROGATORIES

INTERROGATORY NO. 1:

When and how did you select the mark TIME FOR A CURE?

ANSWER:

INTERROGATORY NO. 2:

When and how did you first use the mark TIME FOR A CURE?

ANSWER:

INTERROGATORY NO. 3:

Identify any past or current plans to use the mark TIME FOR A CURE.

ANSWER:

INTERROGATORY NO. 4:

Identify when Applicants first had any knowledge of Opposer and Opposer's use of any
FOR A CURE or FOR THE CURE trademarks.

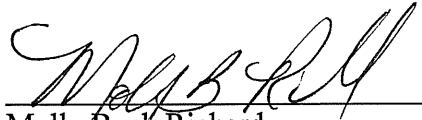
ANSWER:

INTERROGATORY NO. 5:

Identify all revenues received by Applicant for its use of the mark TIME FOR A CURE
and identify how Applicant disposed of such revenues.

ANSWER:

Respectfully submitted,



Molly Buck Richard

molly@richardlawgroup.com

RICHARD LAW GROUP, INC.

8411 Preston Road, Suite 890

Dallas, Texas 75225

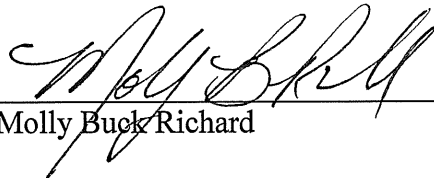
Tel: 214 206 4300

Fax: 214 206 4330

Counsel for Opposer

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Opposer's First Set of Interrogatories to Applicants were sent to Applicants, Christine Macheit and Matilda Beeler, 14738 Pacific Avenue, Baldwin Park, CA 91706 on the 10th day of August, 2009 by U.S. Mail, Postage Prepaid, Certified, Return Receipt Requested.



Molly Buck Richard

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CHRISTINE MACHLEIT and
MATILDA BEELER

Applicants.

OPPOSER'S FIRST REQUESTS FOR ADMISSION

Pursuant to Section 2.120 of the Trademark Rules of Practice and Rule 36 of the Federal Rules of Civil Procedure, Applicant, The Susan G. Komen Breast Cancer Foundation, Inc., requests that Applicants, Christine Machleit and Matilda Beeler, answer the following Requests for Admission within thirty (30) days of the date of service hereof.

Requests for Admission

REQUEST FOR ADMISSION NO. 1:

Admit that Applicants were aware of Opposer's ownership and use of the mark RACE FOR THE CURE prior to Applicants' adoption of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 2:

Admit that the mark TIME FOR A CURE, as used on or in connection with promoting public awareness of breast cancer, is likely to be confused with Opposer's mark RACE FOR THE CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 3:

Admit that the mark TIME FOR A CURE, as used on or in connection with promoting public awareness of breast cancer, is likely to be confused with Opposer's FOR THE CURE and FOR A CURE marks.

RESPONSE:

REQUEST FOR ADMISSION NO. 4:

Admit that Opposer's mark RACE FOR THE CURE is a famous trademark that was famous prior to Applicants' first use of TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 5:

Admit that Opposer's mark RACE FOR THE CURE is a famous trademark that was famous prior to the date that Applicants applied to register the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 6:

Admit that Opposer was using its family of “FOR THE CURE” and “FOR A CURE” trademarks prior to Applicants’ first use of the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 7:

Admit that Opposer was using its family of “FOR THE CURE” and “FOR A CURE” trademarks prior to the date that Applicants applied to register the mark TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 8:

Admit that Opposer’s FOR THE CURE and FOR A CURE marks are famous trademarks that were famous prior to Applicants’ first use of TIME FOR A CURE.

RESPONSE:

REQUEST FOR ADMISSION NO. 9:

Admit that Opposer’s FOR THE CURE and FOR A CURE marks are famous trademarks that were famous prior to the date that Applicants applied to register the mark TIME FOR A CURE.

RESPONSE:

Respectfully submitted,

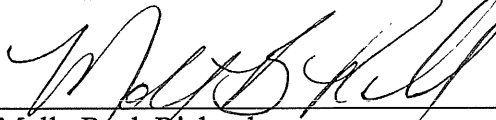


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RICHARD LAW GROUP
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Dallas, Texas 75225
Tel: 214 206 4301
Fax: 214 206 4330

ATTORNEYS FOR THE SUSAN G. KOMEN
BREAST CANCER FOUNDATION, INC.

Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing Opposer's First Requests for Admission to Applicant was sent to Applicants, Christine Macheit and Matilda Beeler, 14738 Pacific Avenue, Baldwin Park, CA 91706 on the 10th day of August, 2009 by U.S. Mail, Postage Prepaid, Certified, Return Receipt Requested.



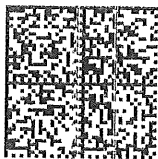
Molly Buck Richard

EXHIBIT B



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ATTEMPTED
NOT KNOWN

RICHARD LAW GROUP

8411 Preston Road, Suite 890
Dallas, Texas 75225

MAIL TO:

Ms. Christine Machleit and
Ms. Matilda Beeler
14738 Pacific Ave.
Baldwin Park, CA 91706-5337

RETURN FOR
ADDRESS

Had on address

PNX

Had on this address

ATTEMPTED
NOT KNOWN

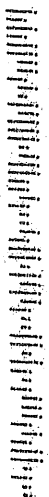


EXHIBIT C



Richard Law Group, Inc.
8411 Preston Road • Suite 890
Dallas, Texas 75225

214.206.4300 phone
214.206.4330 fax
richardlawgroup.com

Direct Dial: 214-206-4312
E-Mail: jim@richardlawgroup.com

September 15, 2009

Via U.S. Mail

Christine Machleit
Matilda Beeler
14738 Pacific Ave.
Baldwin Park, CA 91706-5337

Re: The Susan G. Komen Breast Cancer Foundation, Inc. v. Machleit, et al

Dear Christine and Matilda:

Our letter to you dated August 10, 2009 and enclosing discovery requests on behalf of The Susan G. Komen Breast Cancer Foundation was returned to us today marked "not at this address." Copies of the original letter and discovery requests are enclosed. We have confirmed that these documents were correctly sent to your address of record in this proceeding. Therefore, the discovery requests were properly served and responses were due on September 14, 2009. Please provide us with your responses no later than September 22, 2009. Please also provide your Initial Disclosures which were due on March 13, 2009. If we do not hear from you, we will ask the Board to compel disclosures and responses.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Struthers", with a stylized flourish at the end.

James F. Struthers